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## Beyond 'Criminology vs. Zemiology': Reconciling crime with social harm

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## **BEYOND ‘CRIMINOLOGY VS. ZEMIOLOGY’: RECONCILING CRIME WITH SOCIAL HARM**

### **ABSTRACT**

Since its emergence at the start of the twenty-first century, zemiology and the field of harm studies more generally, has borne an ambiguous and, at times, seemingly antipathetic relationship with the better-established field of criminology. Whilst the tension between the perspectives is, at times, overstated, attempts to reconcile the perspectives have also proved problematic, such that, at present, it appears that they risk either becoming polarized into mutually antagonistic projects, or harmonized to the point that zemiology is simply co-opted within criminology. Whilst tempting to view this as nothing more than an academic squabble, it is the central argument put forward in this chapter that the current trend towards either polarizaton or harmonization of the criminological and zemiological projects, risks impoverishing *both* perspectives, both intellectually and, more fundamentally, in terms of their capacity to effect meaningful social change. To this end, this chapter offers a critical reflection of recent attempts to reconcile the social harm perspective with criminology, focussing in particular on Majid Yar’s attempts to do so using the concept of ‘recognition’ derived from critical theory. It is suggested that such attempts, whilst important in the contribution they make to developing a theory of harm, are necessarily flawed by their reliance on an implicit assumption of a shared conception of harm underpinning both the concept of ‘crime’ and ‘social harm’. By contrast, it is the central argument put forward in this chapter that zemiology and criminology are best understood as divergent *normative* projects which, whilst sharing many of the same goals with regards to the improvement of the criminal justice system and the tackling of social problems, differ primarily in the means by which they seek to achieve these. Therefore, rather than denying this debate through the collapsing of one perspective into the other, or polarizing them into hostiles camps, it is only by recognising the nature of this debate and fostering dialogue *between* the perspectives that we can achieve our shared goals and effect meaningful change.

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### **INTRODUCTION**

Recently, zemiology and the field of social harm studies has emerged as part of a project concerned to move ‘beyond criminology’ (Hillyard *et al.*, 2004a). Central to this endeavour is a commitment to the idea of ‘harm’ as a fundamentally more useful concept than ‘crime’ for understanding and

addressing a whole host of harmful social phenomena that we experience 'from cradle to grave' (Hillyard & Tombs, 2004: 18). In its emergence, zemiology has also constituted a site of tension and ambiguity for criminology, raising questions about the very project of criminology and its relationship to power. In particular, in terms of its initial reception, questions have arisen as to whether zemiology is best understood as an extension or supplement to existing criminological theory, thereby constituting a new theoretical contribution *within* contemporary criminology, or a radical *alternative* to it.

Taking the emergence of zemiology and its apparent tension with criminology as a starting point, this chapter explores the relationship between zemiology and criminology. Whilst early indications appeared to suggest an ambiguous relationship between zemiology and criminology, increasingly it appears that, at least for those invested in them, these perspectives risk either becoming polarized into competing projects or harmonized to the point that issues of social harm are simply, and apparently unproblematically, co-opted into the *raison d'être* of criminology. However, it is the central argument of this chapter that either approach: polarization or harmonization, at least in its current form, risks impoverishing both the criminological and zemiological projects, as well as their capacity to effect meaningful social change.

Specifically, I argue that, insofar as a central theme within early sociological and more explicitly critical and radical criminologies has been to raise awareness of the problematic use of the criminal justice system as a means of recognising and responding to what are, properly speaking *social* problems, both zemiology and criminology are animated by a concern to appropriately apportion responsibility for, and address the causes of, harm. Likewise, zemiology does not necessarily commit its proponents to the abolition of crime or the criminal justice system *per se*, but rather suggests its reservation for responding to genuinely culpable acts of individual harm, which can only be identified once broader structural harms have been recognised and addressed. As such, the aim of this chapter is to suggest that what is at stake in the tension between zemiology and criminology is not a question of ultimate *ends* (e.g. addressing or at least reducing harm) but about the more effective

*means*, and the appropriate starting point for realising these ends. However, so long as the projects of criminology and zemiology are seen as being in tension, the contribution of each is in danger of being undermined, with a risk of academic infighting and navel-gazing between different ‘disciplines’ and fields of study overshadowing the development of constructive and meaningful policy responses to social problems.

### **CRIMINOLOGY, ZEMIOLOGY AND SOCIAL HARM**

Since its emergence as a distinct field of study at the start of the twenty-first century, zemiology has borne a somewhat ambiguous and at times problematic relationship to criminology. Variouslly described as “a *new* field of study” (Kauzlarich & Matthews, 2006: 17 [*emphasis added*]), a “significant and fast expanding contemporary *variant of critical criminology*” (Burke, 2005: 179 [*emphasis added*]) and “a new perspective from which to approach the study of crime and criminal justice” (Whyte, 2005: 488), zemiology arguably occupies a contested position in terms of its relationship to criminology (see Reiman, 2006). This is reflected in questions as to whether zemiology presents a development *within* critical criminology or an *alternative* to it. For example, from Whyte’s review of *Beyond Criminology* it is not altogether clear the extent zemiology is identified as an alternative to, rather than a continuation of, criminology. The characterization of the text as “truly groundbreaking” (Whyte, 2005: 488) suggests it is in some ways importantly divergent from all that has preceded it, whilst the designation of zemiology as proposing “a new perspective from which to approach the study of crime and criminal justice” (Whyte, 2005: 488) reasserts its primary locus as residing in the subject matter typically identified as the territory of criminology. By contrast, other interpretations (such as that of Burke (2005)), explicitly characterise zemiology as a type of criminology, suggesting, perhaps, it is akin to other variants within criminology such as abolitionism or feminist criminology.

At the same time, it also seems that there is a growing recognition that zemiology might not be so simply or unproblematically subsumed within criminology. The significance of zemiology and its critique of

contemporary approaches to tackling problems of crime and justice, reflected in the growing visibility of zemiology and/or social harm references in criminology subject benchmarks and curricula (Hillyard & Tombs, [forthcoming]) suggests awareness that the identification of zemiology with criminology cannot necessarily be assumed. However, this has only resulted in further confusion over, and problematisation of their relationship (Hillyard & Tombs, [forthcoming]). This includes, more recently, not only a questioning of the relationship between zemiology and criminology but, in attempting to further clarify (or perhaps establish) a distinction between the two, raising questions as to whether zemiology is also best understood as distinct from 'social harm' more generally (Hillyard & Tombs, [forthcoming]; see also Pemberton, 2008: 84). This subsequent distinction (between zemiology and 'social harm') appears to stem from a recognition of the legacy of the concept of social harm *within* criminology (cf., Hulsman, 1986; Muncie, 2000; Tifft & Sullivan, 2001), and subsequent concern to distinguish the zemiological project from the critical criminological one by some of its most prominent architects (Hillyard & Tombs, [forthcoming]).

## **CRIMINOLOGY VS. ZEMIOLOGY**

Whilst space precludes a more detailed analysis, a reciprocal tension between zemiology and criminology can thus be identified. Without wishing to deny the variety of perspectives and positions occupied by those engaged in the criminological and zemiological enterprises respectively, nor to essentialize these perspectives, to generalise, from a zemiological standpoint, criminology is seen as problematic insofar as it:

- (i) constructs harm in particular problematic ways
- (ii) reifies the criminal justice system
- (iii) reinforces existing (liberal individualist) models of causation and responsibility (see, for example, Hillyard *et al.*, 2004; Copson, 2016; Hillyard & Tombs, [forthcoming]).

Alternatively, from a criminological standpoint, zemiology is seen as problematic insofar as it:

- (i) colonises existing approaches or themes *within* critical criminology and re-presents them as 'novel' and peculiar to zemiology
- (ii) denies the role of the criminal justice system (and, by extension, criminology) in effecting meaningful social change
- (iii) fails to articulate a clear alternative basis for its own theorising of and response to, social problems (see, for example, Zedner, 2011).

The result of this apparent tension between zemiology and more established modes of criminological thought has been an increasing polarization of criminology and zemiology into seemingly opposing hostile camps.

Consequently, on the one hand, key proponents of the zemiological or social harm perspective have explicitly sought to distance their work from that of 'criminology'. Simon Pemberton, for example, identifies his project as helping to develop social harm as an 'oppositional' discourse to that of crime (2015: 6.), maintaining that

"if the social harm debate remained within the confines of criminology, it would be stuck within a conceptual cul-de-sac, whereby the individualising tendencies of the criminal law would constrain the possibility of producing systematic and holistic analyses of harm" (Pemberton, 2015: 6).

On the other hand, equal antipathy has been shown from critical criminologists who have argued that zemiologists' claims to offer harm as an *alternative* to crime essentially amounts to a repackaging of pre-existing criminological theorising under a new name, thereby denying the way in which harm has provided a key site of investigation and critique within criminology. In particular, they challenge the extent to which zemiology presents a radical break with the established critical tradition within criminology (cf. Muncie, 2005; Hughes, 2006). Indeed, the notion of social harm has been used in direct conjunction with that of crime, with crime often presented as one form of social harm within a wider range of socially injurious behaviours (cf. Room, 2000; Nutt et al., 2007; Cain & Howe, 2008). This usage arguably reflects a long-established critical criminological project of expanding the object of criminological study away from crime as legally defined (whilst avoiding the

problems of designating such behaviours as criminal in the absence of a violation of criminal law). Primarily, this aims to decouple the study of crime and criminal justice from the operations of state power and control. This is reflected in a litany of criminological studies seeking to develop the concept of crime and thus provide a means of addressing harmful behaviour not currently included in or prosecuted by the criminal justice apparatus (albeit implicitly at times through the presumption of such areas as proper for criminological interrogation in the first place). This includes attempts to recognise as criminal (or rather *better recognise* as criminal): harmful actions of states and corporations, human rights violations, environmental and ecological harms, poverty, and homelessness (cf., for example, Schwendinger & Schwendinger (1975); Barak & Bohm (1989); Cohen (1993); Green & Ward (2004); Walters (2006); Whyte (2007); Felices-Luna (2010)). Essential to such endeavours is a resistance on the part of criminologists to becoming simply a “scientific ‘alibi’” (Garland, 1992: 404-405) for the existing social order, maintained and legitimated through the criminal justice apparatus. As a result, questions arise as to whether the emphasis on social harm advanced by proponents of the zemiological perspective necessarily requires “the abandonment of criminology” (Muncie, 2005: 200), or whether zemiology should instead operate alongside, thereby supplementing existing approaches towards harm and justice (cf. Muncie, 2005; Reiman, 2006).

If zemiology’s claims to offer harm as an *alternative* to crime essentially is considered, at best, a repackaging of preexisting criminological theorising under a new name, at worst, it stands accused of denying the centrality of the concept of harm to the notion of crime and risks reinforcing the compartmentalisation of knowledge production and the suppression of normative theorising in twenty-first century academic thought (see Zedner, 2011: 277-278; also Copson, 2013; 2014).

For example, Lucia Zedner has questioned the social harm perspective’s “central claim [...] that it makes no sense to distinguish between criminal and other harms” (2011: 273), arguing that

“[t]his assertion fails to recognize that the construction of crime is necessarily a normative exercise and one in which criminology, alongside criminal law, has an important role to play in determining which principles should underpin its definition, policing and punishment” (Zedner 2011: 274).

Moreover, Zedner contends, “[i]n a legal system grounded on individual autonomy there are good reasons to identify criminal wrongdoing and to punish those who perpetrate it. Failure to do so constitutes a denial of individual autonomy” (2011: 274). In addition, central to Zedner’s account is a view of the criminal law and its application as a fundamentally normative endeavour concerned not only to hold individuals accountable but also, and crucially, to limit the power of the state to interfere with individuals’ conduct and to protect them from its excesses in a way that does not apply in other areas of policy or law. As such, she concludes,

“before criminologists capitulate to the call to abandon crime (and with it criminology) they might think more critically about the claims made for alternative approaches and consider the positive restraints and protections entailed in criminal law and procedure” (Zedner 2011: 276).

## **RECONCILING CRIME WITH HARM**

At the same time as there has been an apparent growing antipathy between some scholars of crime and justice on the one hand and advocates of social harm on the other (most notably social harm theorists who explicitly reject any affiliation of their project with that of criminology (see Pemberton, 2015; Hillyard & Tombs, [forthcoming])), there also appear increasing numbers of other critical scholars who talk about ‘crimes and harms’ collectively, that is under the same umbrella. This is reflected in the growing incorporation of issues of social harm into criminology curricula noted above, as well as in the inclusion of issues of social harm/zemiology in mainstream criminology conferences noted by Hillyard and Tombs ([forthcoming]). Resisting any tendency towards polarization between zemiology and criminology, these scholars seek to add social harm/zemiology to the criminological *raison d’être*



– to which some of the arguments included in this edition themselves bear witness.

Whilst recognising the apparent tensions between zemiology and criminology, instead of polarization here one finds a project of harmonization with attempts made to reconcile zemiology and criminology. Of particular note are Yar's (2012a; 2012b) recent attempts to resolve the tensions between zemiology and criminology through the use of critical theory and the concept of recognition. Attributing much of the ambiguity in the relationship between zemiology and criminology to an 'ontological deficit' (2012a: 59) in that which "distinguishes the harmful from the non-harmful" (2012a: 59), for Yar, the problem stems from the fact that a "lack of specificity leaves the concept of harm lacking the very same ontological reality that is postulated as grounds for rejecting the concept of crime" (2012a: 59). Thus, whilst 'harm' is lauded by advocates of the social harm perspective for its independence from formal legal apparatus for establishing its *raison d'être*, without more rigorous definition "[t]he appeal to social harm is sustained by its intuitive moral-political appeal and 'commonsense' purchase, but no more" (2012a: 59).

As a remedy, Yar offers 'recognition' as both the solution to this 'ontological deficit' of the social harm perspective, and also the means by which "to dissolve the juxtaposition of 'harm' and 'crime' into competing conceptual alternatives" (Yar, 2012b: 116). Drawing on critical theory, and particularly on the work of Axel Honneth, the concept of 'recognition' is related to the capacity for self-realisation based on a view of human beings as living in, and formed by, an intersubjective and mutually dependent social world, as opposed to the liberal view of humanity as formed of pre-existent individuals who enter the world with a fully formed sense of self. Based on the idea that "[t]he individual comes to know himself, to recognise himself as a being with particular attributes or properties, through the acknowledgement conferred by an 'other'" (Yar 2012a: 57), recognition is identified a central component in "forging a coherent sense of selfhood (self-esteem)". Three key modes of recognition are identified: respect, esteem and love, which serve as "critical yardsticks [...] to identify existing social, political, economic and cultural

arrangements that *deny* recognition to human beings” (Yar, 2012a: 58). Against this backdrop, Yar suggests a conceptualisation of social harm as “nothing other than *the inter-subjective experience of being refused recognition with respect to any or all of these dimensions of need*” (2012a: 59).

It is important to note that here Yar is employing a particular Hegelian notion of ‘recognition’ as a site of self-realisation or identification in relation to others. This is distinct from the more general idea of the formal recognition of particular rights in law. However, in terms of resolving the tension between criminology and zemiology, Yar maintains that, via this account of harm as non-recognition (in the Hegelian sense), social harm and crime can be reconciled as mutually compatible since the role and function of criminal law *should* be to ensure protection of individual rights to recognition (notwithstanding that this may not always be realised in practice). In this way, Yar argues, “making recourse to recognition as the grounds of a theory of harms can help resolve the conflict by bringing ‘crime’ critically into the ambit of social inquiry” (2012b: 116). Moreover, reflecting a commitment to normative evaluation to which critical theory is avowedly tied, Yar claims that

“[b]y using recognition as a benchmark or litmus test, we can [also] evaluate the common categories of crime as legitimate (or illegitimate) with reference to the basic needs of social subjects. This enables us to discriminate between formally constituted categories of crime according to their consistency with the principle of promoting recognition, and whether they offer protection from social harm” (Yar, 2012a: 62).

Accordingly, we can then still make sense of the social harm perspective’s commitment to decoupling definitions of crime and applications of the criminal justice system from sites of power without necessarily identifying social harm and crime as mutually incompatible: rather, the problems lie in the way in which the concept of ‘crime’ may have been illegitimately applied and this should thus be the focus of evaluation.

However, even these attempts at reconciliation can be seen as problematic. Whilst Pemberton, credits Yar's work inasmuch as it "correctly [...] focuses our attention on the relational nature of harm, allowing us to consider the injuries of social isolation, as well as misrecognition of harm" (2015: 19), he also suggests that "the needs Yar identifies are inevitably highly subjective in nature" (2015: 19). Therefore, in terms of its capacity to offer an ontological account of what, exactly, harm is, the approach is perhaps less satisfying than it initially purports and questions of "how emotional needs such as love and esteem are operationalized in empirical study" are left "for future social harm analyses to resolve" (2015: 19).

However, this criticism does not challenge Yar's position or his aim *per se* (namely to reconcile crime and social harm): rather, it simply highlights a limitation as to what it provides as an account of social harm. That said, whilst Pemberton perhaps (understandably) overlooks Yar's commitment to the language of crime in favour of his contribution to the development of social harm, in a field where, as Pemberton (2015) highlights, such contributions are often lacking), for Hillyard and Tombs ([forthcoming]), Yar's approach is more fundamentally problematic. They point out that, "for many of the social harms upon which [they] and others have focussed, law and rights are likely to be of very little relevance at all" (Hillyard & Tombs, [forthcoming]).

Indeed, whilst recognition of the basic rights we all have simply by virtue of our existence as humans has been important for affording individuals protections from violations and excesses of power, as has often been seen (most notably, with the formal enshrinement of human rights in international law (see, for example, Cmiel, 2004)), the language of rights remains saturated by the undercurrent of individualism, taking from the outset the individual as the primary unit to whom such rights are both attributable and attributed. Not only has it been suggested that discussion of rights violations tend to focus on particular individuals or groups who can be identified as violating these rights, neglecting the way in which such violations might be located in broader systems of harm (see Sjoberg *et al.*, 2001; Kennedy, 2002: 124-125), but,

more fundamentally, that doctrines of human rights “undergird the individualism of the capitalist system” (Sjoberg *et al.*, 2001: 18).

Moreover, in acknowledging rights violations (whether those of formally enshrined human rights or informal rights, such as Yar’s suggested right to recognition), there seems a general orientation towards recognising the active causation of harm, arguably at the expense of a recognition of harm as something that might equally arise, not from direct acts, but also through more apparently passive, ‘benign neglect’. This is reflected in the absence of the imposition of positive duties to assist those experiencing any form of difficulty, hardship or suffering where such experiences do not arise from identifiable events or active interventions. Obligations reside primarily in duties not to exacerbate or impose such experiences, rather than to alleviate pre-existing ones. This is not to say that measures to create positive duties to alleviate suffering are not recognised (for example, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1981)), but to suggest their limited effectiveness as long as they reside in a system which, it has been argued, is ultimately situated in the tradition of liberal individualism. Indeed, this is a limitation reflected in Yar’s own approach to reconciling crime with harm, insofar as he identifies as ‘concrete examples’ (2012b: 115) of harm as non-recognition:

“**actions** such as inter-personal physical, sexual, and emotional violence within the family [which] acquire their specifically *harmful* character because they violate the necessary conditions for a person to establish basic self-confidence through the experience of love. Public (including state-sanctioned) **practices** of torture and abuse, theft, and appropriation amount to a denial of those rights that meet the need for dignity and equality amongst others as citizens. **Practices** such as market discrimination or symbolic denigration on the basis of gender, ethnicity, or sexual orientation are harms in that they deny to subjects a recognition of the distinctive worth of their identities and ways of life.” (Yar 2012b: 115 [emphasis added]).

Whilst undoubtedly instructive in its capacity to recognise the way in which social structures can conspire to bring about individual harm (in terms of non-recognition), through recognition of, in particular, “market discrimination or

symbolic denigration” on the basis of particular social identities, Yar’s account of harm nevertheless does not entail a positive duty to realise equality in the first place. More specifically, whilst it might entail a duty to ensure what has traditionally been termed ‘formal equality’ (see Barnard & Hepple, 2000: 562-563) in terms of social structures, institutions and processes, it is not clear that it goes so far as to impose a requirement for more ‘substantive equality’ (see Barnard & Hepple, 2000: 564-567), nor that it recognises the absence of *this* as a basis for harm as it appears at least some of the strongest proponents of the zemiological perspective appear to.

For example, whilst it might be considered harmful to deny equal access to employment opportunities or respect for family life based on gender, ethnicity, sexual orientation and so on, on a recognition-based conception of social harm, it does not necessarily entail that inequalities in the basic structures of society are necessarily recognised as ‘harms’, nor, subsequently, that they will be suitable candidates for legal intervention on this approach. In a society based on social stratification one may argue that we all are afforded the same formal recognition, irrespective of social position, but that our abilities to realise our own projects or sense of self is nevertheless unequal. One can argue that we can all enjoy the same formal recognition insofar as we all have the same *right* to education, legal representation, sexual autonomy, employment, etc. irrespective of gender or social class, for example. However, our ability to exercise those rights may be shaped by our social position: poorer people are less likely to have the opportunity to exercise those rights in the same way as wealthier people, but there is no person or agency barring their doing so, so it is not clear to what extent such people are suffering from ‘non-recognition’ and, hence, ‘harm’.

That Yar’s account is limited in this respect perhaps stems from his commitment to focus on the criminal law. Indeed, it is interesting and important to note in relation to Yar’s (2012a; 2012b) arguments about the normative role of the *criminal* law, that the recognition of, and enshrinement of such rights, is typically concentrated in other areas of law. This is because, as Zedner (2011: 282) notes, the criminal law is concerned to protect

individuals from the violation of particular rights by the State. It is not concerned with the positive formulation or recognition of rights by the State or society more generally in the first place.

On this closer reading, therefore, Yar's approach appears perhaps more a continuation of existing legal discourses for identifying harm, echoing those of critical criminologists with which proponents of zemiology have taken issue (see Hillyard & Tombs, 2004). For example, the title of one of Yar's articles explicitly indicates that he is seeking to provide 'a general theory of crime **as** social harm' (Yar, 2012b [emphasis added]). That Pemberton's criticism of Yar (2012a) does not extend further, therefore, is perhaps less a reflection of Yar's theory, than of Pemberton's own project: to study social harm in its own right, without recourse to criminology or the language to crime. Pemberton states:

"A key challenge for those wishing to establish zemiology as a distinct field of study is the absence of an established definition of social harm. With few exceptions this literature has developed on the margins of criminology, where social harm is used as a means to expand the notion of crime. [...] this book seeks to develop a definition of social harm as an organizing concept for zemiology, a distinct field of study to that of criminology. Disregarding the attempts to extend the notion of crime, this literature offers an important departure point from which the concept of social harm may be developed" (Pemberton, 2015: 14).

It is important to situate Pemberton's response to Yar in this context. His disattending to Yar's attempts to synthesise social harm with crime arguably stems from his primary interest in the use and definition of social harm *per se*, without recourse to crime. Indeed, Pemberton states that he explicitly excludes "literature relating to 'criminal harm'" in his analysis of the concept of social harm and its various uses, "as it represents a distinct criminological enterprise to remedy the neglect of 'harm' within the discussions of 'crime'" (2015: 14). Clearly, then, Pemberton either does not see Yar's enterprise as part of this project or is willing to overlook this aspect of his work because Pemberton is more concerned with understanding and developing the concept of social harm itself, in abstraction from the role it has played in criminology.

In either case, it certainly seems important to distinguish Yar's efforts from more 'traditional' approaches within criminology to expand the notion of crime to incorporate other harmful acts, typically through recourse to other (often legal) standards such as human rights abuses (Schwendinger & Schwendinger, 1975) or civil law or administrative requirements (Sutherland, [1949] 1983). Yar is clearly not straightforwardly seeking to expand the notion of crime via the provision of some alternative yardstick for defining crime in the same vein as these previous attempts. Rather, he is seeking to render compatible the projects of criminology and zemiology by identifying a shared ontological basis upon which they are founded. As Hillyard and Tombs ([forthcoming]) summarise:

"While acknowledging that the criminal law can be conceived as 'a coercive instrument legitimated by the power of the capitalist state' Yar argues that it is possible to adopt a different view of the law using a recognition theoretical standpoint. From this position, the law's attempt, however "partial, flawed or misguided", to enshrine formal codes and prohibitions to protect people from harm assists in securing their basic rights" (Hillyard & Tombs, [forthcoming]).

However, insofar as it focuses on the right of recognition as the locus for identifying social harm and seeking to provide a synthesis of social harm with crime, Yar's approach is "ultimately problematic, notwithstanding that some people may secure their basic rights through the criminal law and many more will buy into the notion of the possibility of justice" (Hillyard & Tombs, [forthcoming]), owing to its continued unreflective commitment to the discursive framework of crime.

## **BEYOND 'CRIMINOLOGY VS. ZEMIOLOGY'?**

Thus, notwithstanding the important contribution that attempts such as Yar's have made in terms of trying to reconcile zemiology with criminology, the challenge for resolving the ambiguity between zemiology and criminology remains. The temptation could easily be to dismiss this as an interesting but irrelevant footnote to academic infighting and jostling for intellectual esteem

and there is certainly concern that such debates risk accusation of academic navel-gazing without a stronger account of why such issues matter. For many, the question of the terminology we use, or whether we identify as criminologists or zemiologists, will surely seem a luxury of the academic in their ivory tower, detached from the lived reality of the social problems such intellectual theorising claims to seek to address. In a time when the relevance of 'expert knowledge' is increasingly being called into question (see, for example, Loader & Sparks, 2011), there is a very real danger that such academic infighting only serves to reinforce its irrelevance to public life.

This is not helped by the contemporary climate of knowledge production, of which the apparent ambiguity concerning the relationship between zemiology and criminology and, particularly, the opposing tendencies towards, on the one hand, hostile polarization between these perspectives and, on the other hand, (often unreflective) co-option of zemiology within criminology, is arguably indicative. As increasing pressures upon academics to secure funding and growing insecurities regarding position and ensuring contemporary relevance results in increasing specialisation within, and schisms between, different sites of disciplinary knowledge (see Copson, 2014: 63), there is a danger that important normative debates are all too easily recast as academic squabbles and jostling for position.

However, the resolution of this ambiguity between criminology and zemiology is important because, whilst cast as minor disputes about abstract issues, at its heart, it taps into normative questions about how critical scholars imagine their role *vis-à-vis* effecting meaningful social interventions that address social problems. The reduction of these tensions to seemingly abstract and often dry debates regarding terminology, reflects the increasing suppression of normative theorising within social research (see Copson, 2013; 2016) and increasing consignment of such research to playing a technical 'supporting' role in the administration of public policy (see Zedner, 2011; Loader & Sparks, 2011). Consequently, perhaps a more fruitful starting point for understanding the relationship between criminology and zemiology resides in delineating



their respective normative projects in order to ascertain their compatibility and/or sites of divergence.

To this extent, the argument put forward here echoes that of Yar: that theoretical accounts require normative engagement, starting with a more rigorous exploration and definition of the concept of harm by proponents of the zemiological perspective. It is arguably the absence of this which threatens to raise the hackles of those criminological and legal scholars who (understandably) reject the apparent implication that they are simply operating to legitimate the criminal justice system and existing structures of power, in abstract from normative theorising.

However, the problem with foregoing attempts such as Yar's to reconcile zemiology with criminology is a presumption that there is or must be a universal definition of harm that is implicit within *both* the work of critical criminologists and proponents of the zemiological perspective (e.g. harm as non-recognition). What is not considered is the notion that harm itself is an "essentially contested concept" (Gallie, 1956), nor that whilst in many respects looking very similar, the projects of zemiology and critical criminology might be, in some important way, distinct. As an 'essentially contested concept', rather than reflecting an intrinsic quality of experience, 'harm' may be considered from a sociological perspective to be a discursively constructed and applied label, embedded in particular normative assumptions, and articulated and utilised in varying ways with varying implications. The danger of the harmonization approach taken by Yar and others is an assumption that when talking about 'social harm', proponents of the zemiological perspective are necessarily invoking the same concept that has, indeed, long been drawn upon by critical criminologists, to the same ends. So whilst there does need to be a more rigorous and robust exploration of the concept of harm, the starting point for this analysis should not be an assumption of the compatibility of 'criminal harm' with 'social harm' as Yar's recognition-based account seems to suggest.

Considered thus, we can see that whilst critical criminologists and zemiologists may envision similar projects in terms of seeking to address social inequalities and to recognise and reduce the harms of the criminal justice system, the divergence between the perspectives lies largely in a disagreement about the means of achieving this. For proponents of the zemiological perspective, the recourse to the language of harm can be considered a deliberate strategy – a form of *transpraxis* (Henry & Milovanovic, 1991: 295; see Copson, 2016: 90-91) – deliberately used to disrupt and challenge dominant ways of framing social problems without which we can only ever reify existing structures of thought and dominant (e.g. criminal justice) paradigms of conceptualising and responding to social problems. Understood thus, any attempts to subsume social harm within the criminology or to incorporate the study of social harm under a broad umbrella of ‘crimes and harms’ unreflectively as some have sought to do, risks undermining this strategy. This is particularly so given a general failure (as noted in the foregoing analysis of Yar’s (2012a; 2012b) work, and as highlighted by the work of Pemberton (2015)), to unpack and define ‘harm’ in the first place and to distinguish ‘social harm’ from ‘harm’ more generally. It is worth noting that the concept of ‘harm’ itself has long played a key normative role in criminal law (see Zedner, 2011; Feinberg, 1984), with the focus typically on identifying the causation of harm to others as a basis for restricting individual conduct, and for protecting individual rights *vis-à-vis* the state. This is in stark contrast to the account of social harm proposed by proponents of the zemiological perspective, who seek to emphasise the social determinants of (as opposed to individual culpability for) harms. To talk of ‘crimes and harms’ unreflectively, however, risks an implicit reification of the particular conceptualisation of harm implicit within criminal law, even if it does not necessarily intend this. In this context, therefore, the rejection of their alliance to criminology by some key proponents of zemiology can be understood as a deliberate political strategy, which aims to subvert the dominant criminological paradigm and challenge its particular (if implicit) conceptualisation of harm, rather than either a denial of existing critical work within criminology or a cynical claim to originality for the purposes of securing academic status and funding.

Equally, for proponents of a criminological perspective that advocate the studying of 'crimes and harms', the recourse to the language of 'crime' might equally be considered a more useful strategy for engaging key stakeholders and bringing about meaningful reform than the language of 'harm' alone. In the twenty-first century, 'crime' has political and public currency as a focus for policy intervention in a way that 'harm' does not. As a strategic end, it might be argued, a clear focus on, say reducing the harms wrought by the criminal justice system, or recognising the (often non-criminalised) harms of the powerful as analogously harmful to or more harmful than already criminalised harms, might be a more clearly defined and realistic site for enacting social change than addressing 'harm' in its more nebulous and less tangible forms. In terms of challenging the practices of the powerful, it is undeniable that the use of alternative measures of 'harm' has provided an important means for disrupting and challenging the organisation and justification of inequalities in society perpetuated by the notion of 'crime' and the criminal justice system.

In some respects, the tensions between criminology and zemiology and the various attempts to polarize or harmonize these perspectives can simply be seen as a contemporary rehashing of age-old debates that have occupied social theorists concerning the relative weightings given to structure versus agency in understanding and responding to human behaviour and the most effective routes to effecting meaningful social change by critical scholars. However, these are also debates that have long-featured in criminology, long before zemiology emerged. As such, to reduce the tension between zemiology and criminology to simply these longstanding theoretical questions fails to recognise that there is, perhaps, something more at stake. The problem is, however, that contemporary infighting between academics as to the 'proper' relationship between criminology and zemiology risks overshadowing this.

For example, Zedner's criticisms of social harm noted above reflect a relatively common theme amongst those resistant to zemiology's claims to offer a preferable alternative to the discourse of crime. Anecdotal personal experience suggests a common fear arising in discussions around zemiology

is that, through its emphasis on harm rather than crime, and, in particular, its commitment to exploring the social determinants of harm, zemiology ultimately serves to, at best, neglect crime. At worst, it excuses crime as a product of society, thereby absolving culpable individuals from their role in enacting harm on the victims of crime. However, this is arguably to misunderstand the project of zemiology. The zemiological focus on harm is not intended to deny individual culpability for individual acts that result in harm, but rather to beg questions as to where responsibility for those harms should fall. As its key proponents have highlighted:

“to utilise the social as a departure for explanation and theorising need not, and for us does not, entail a rejection of the need to account for human agency. But it is to accept a view of the world that sees human agency as highly delimited by structures, structures which must be known and of which we must provide accurate accounts” (Hillyard *et al.*, 2004b: 271).

Therefore, the systematic analysis of harm advocated by proponents of the zemiological perspective is arguably intended to ensure that, when we are holding individuals responsible for harmful behaviours, we are genuinely holding them responsible for their deliberate, intentional acts, *all other things being equal*. It is not necessarily seeking to provide an alibi for criminality, but seeking to ensure that when we hold people responsible for their behaviours, we hold them responsible only for their behaviours, and not for the circumstances upon which such behaviours are predicated. The problem, at present, for proponents of the zemiological perspective is that too often ‘crime’ and the criminal justice system are used to deal with what are, ultimately, social problems. It is, however, only by addressing those social problems and ensuring substantive equality across society that we can hope to legitimately make such a distinction. Arguably, the logical conclusion of the social harm perspective is not necessarily an abolition of crime nor of the criminal justice system (though it would entail its radical reform so as not to exist as a site of ‘pain delivery’ (Christie, 1981) and harm in and of itself), but rather its significant reduction to ensure that we only punish individuals for their *culpable acts*. We can only ensure this, however, once the structures of harm

and inequality that permeate our society and too often predicate the application of our criminal justice system, are eradicated.

In short, the contemporary context of knowledge production only adds to the confusion as to what the relationship between zemiology and criminology is, can, or should be and there is a need for clarification if we are to move beyond simple academic infighting and demonstrate relevance to the contemporary social world. The danger is that the current tendencies to either co-option of zemiology within criminology or polarization between zemiology and criminology respectively, risk impoverishing both zemiology and criminology, whilst such apparently abstract theoretical debates also risk occluding what is really at stake in such debates. For example, Hillyard and Tombs ([forthcoming]) note the tendency of criminologists to overlook the important contributions zemiology has made for the sake of demonstrating the superiority of criminology over zemiology.

Instead, were we to engage with other perspectives with more “intellectual ambition, political humility” (Loader & Sparks, 2011: 132), we might see that the distinction between zemiology and criminology fundamentally lies not in their critical assessment of either the criminal justice system nor their analysis of the best way of understanding the causes of social problems. With perhaps the exception of genuinely ‘administrative’ criminologies, criminologists and zemiologists alike have shown themselves to be concerned to critique the criminal justice system as a means of responding to social problems. They are also equally concerned to properly recognise and address the causes of those social problems, seeking to situate individual behaviour in broader social structures. The tension that arises seems largely to be a normative disagreement about the most effective means for recognising and addressing these problems, not that these are problems that need addressing. Rather than denying this debate through the collapsing of one perspective into the other, or polarizing them into hostile camps of mutual antipathy, it is, perhaps, incumbent upon all critical scholars to act as “democratic under-labourers” (Locke, [1690] 1975 cited in Loader & Sparks, 2011: 124), recognising our sites of divergence, and fostering dialogue

*between* them if we are to achieve our shared goals and effect meaningful change.

## CONCLUSION

In conclusion, as this discussion has sought to highlight, the danger is that existing debates around the relationship between criminology and zemiology, tend to do so in the abstract – missing the extent to which such theoretical perspectives can and should be understood as normative projects. In this aspect, Zedner (2011) is right to highlight the suppression of normativity within criminology and the danger this poses for turning criminology into a technical discipline for administering criminal justice, but this is a threat that is facing contemporary social research more generally (see Copson, 2013). Within these normative projects there are sites of agreement – most notably, the shared goal for both critical criminologists and proponents of zemiology that the role of their intellectual endeavours is to challenge dominant power structures and address contemporary inequalities. But there are also sites of divergence, and understanding the commitment to the language of ‘harm’ as part of a strategy or *transpraxis* for disrupting dominant ways of thinking is central to understanding the project of zemiology. As such, attempts to simply reconcile zemiology with criminology (such as Yar’s (2012a; 2012b)) arguably miss the point of zemiology and threaten to reduce what are bold normative questions about how to effect change into conceptual problems in need of resolution.

Whilst such issues may be of interest to the social theorist, their wider significance is less obvious. If we want to move beyond accusations of academic navel-gazing and infighting, we need to connect our theoretical interests with the real world. And in this respect, one might well question whether it really matters what we call ourselves – zemiologists, criminologists, academics, activists: what is more important is what we seek to achieve and how best we might do so. By doing so, the hope is that we can move beyond what may amount to little more than academic identity-politics towards what are, ultimately, political and normative debates about how we might better achieve the ends to which we are committed.

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